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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

Following consultations among members of the Security Council, the President of the Council made the following introductory statement, on behalf of the Council, at its 3139th meeting, on 23 November 1992, in connection with the Council's consideration of the item entitled:

"(a) The situation between Iraq and Kuwait

"(b) Letter dated 2 April 1991 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council (S/22435)

Letter dated 4 April 1991 from the Chargé d'affaires a.i. of the Permanent Mission of France to the United Nations addressed to the President of the Security Council (S/22442)

Letter dated 5 March 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/23685 and Add.1)

Letter dated 3 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/24386)

Letter dated 19 November 1992 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council (S/24828).

"I. General obligation

"1. The resolutions concerning the situation between Iraq and Kuwait impose a number of general and specific obligations upon Iraq.

"2. As regards the general obligations, Iraq is required, under paragraph 33 of Security Council resolution 687 (1991), to give official notification to the Secretary-General and to the Security Council of its acceptance of the provisions of that entire resolution.

"3. Iraq signified its unconditional acceptance in letters dated 6 and 10 April 1991 (S/22456 and S/22480, respectively) and 23 January 1992 (S/23472).

"II. Specific obligations

"4. In addition to the general obligation to accept the provisions of resolution 687 (1991) in their entirety, several Security Council resolutions impose specific obligations upon Iraq.

"(a) Respect for the inviolability of the international boundary

"5. By paragraph 2 of resolution 687 (1991) the Security Council demands that Iraq respect the inviolability of the international boundary and the allocations of islands previously agreed upon between Iraq and Kuwait. Pursuant to paragraph 3 of that resolution, the Secretary-General established a Boundary Demarcation Commission to demarcate the boundary between Iraq and Kuwait. Paragraph 5 of the same resolution requires Iraq and Kuwait to respect a demilitarized zone (DMZ) established by the Security Council.

"6. Iraq did not participate in the work of the Boundary Demarcation Commission at its July 1992 and October 1992 sessions. Iraq has refused up to now to withdraw a number of police posts that are not in line with UNIKOM's principle that both sides should stay 1,000 metres from the boundary line shown on UNIKOM's map. The Council in paragraph 2 of resolution 773 (1992) welcomed the Commission's land demarcation decisions and, by paragraph 5, the intention of the Secretary-General to carry out at the earliest practicable time the realignment of the DMZ to correspond to the international boundary demarcated, by the Commission, with the consequent removal of the Iraqi police posts.

"7. In response to the Iraqi Foreign Minister's 21 May 1992 letter to the Secretary-General (S/24044), the Security Council in a 17 June 1992 statement (S/24113) stressed to Iraq the inviolability of the international boundary between Iraq and Kuwait being demarcated by the Commission and guaranteed by the Council pursuant to resolution 687 (1991). The Presidential statement also noted with dismay that the Iraqi Foreign Minister's letter recalled past Iraqi claims to Kuwait without also recalling Iraq's subsequent repudiation of these claims. The members of the Council firmly rejected any suggestion that tended to dispute the existence of Kuwait. Resolution 773 (1992) underlined the Council's guarantee of the above-mentioned international boundary and its decision to take as appropriate all necessary measures to that end in

accordance with the Charter, as provided for in paragraph 4 of resolution 687 (1991).

"(b) Weapons-related obligations

"8. Section C of resolution 687 (1991) imposes certain specific obligations upon Iraq with respect to its chemical and biological weapons programmes, its ballistic missile programmes with a range greater than 150 kilometres and its nuclear programmes. These obligations are elaborated upon in resolutions 707 (1991) and 715 (1991). The obligations are defined in paragraphs 8, 9, 10, 11, 12 and 13 of resolution 687 (1991) and they are elaborated upon in paragraphs 3 and 5 of resolution 707 (1991) and paragraph 5 of resolution 715 (1991).

"9. By resolution 699 (1991), the Security Council decided that the Government of Iraq shall be liable for the full costs of carrying out the tasks authorized by section C of resolution 687 (1991). No funds have so far been received from Iraq to meet this liability.

"10. The Council has noted that since the adoption of resolution 687 (1991) progress has been made in the implementation of section C of that resolution but that much remains to be done. In particular, Iraq needs to provide the full, final and complete disclosure of all aspects of its programmes for weapons of mass destruction and ballistic missiles with a range greater than 150 kilometres. There is a particular and vital requirement for complete information, including credible documentary evidence on Iraq's past production, suppliers and consumption of all prohibited items, and its past capacity to produce such items.

"11. Iraq must also acknowledge clearly its obligations under Security Council resolution 715 (1991) and the two plans for ongoing monitoring and verification approved thereunder. It must agree to implement these obligations unconditionally. In this connection the Council notes the letter of 28 October 1992 from Iraq's Minister of Foreign Affairs to the Secretary-General seeking a review of the terms and provisions not only of resolution 715 (1991) but also Security Council resolution 707 (1991). It is accordingly clear that Iraq seems unprepared to comply with the obligations already prescribed.

"12. The Special Commission has informed the Council about the outstanding matters that would at the present time appear to be the most important. The Council has noted document S/24661 of 19 October 1992 entitled 'The Status of the Implementation of the Plan for the Ongoing Monitoring and Verification of Iraq's Compliance with Relevant Parts of Section C of Security Council resolution 687 (1991)'.

"13. The Council has also noted the document S/24722 of 28 October 1992 containing the second report of the Director General of the International Atomic Energy Agency (IAEA) on the implementation of the Agency's plan for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12 of resolution 687 (1991).

"14. In a statement issued on behalf of the members of the Council (S/23803) on the Special Commission's right to conduct aerial surveillance flights in Iraq, the President stated on 10 April 1992 that:

'The members of the Council wish to point out that the surveillance flights are carried out under the authority of Security Council resolutions 687 (1991), 707 (1991) and 715 (1991). Reaffirming the right of the Special Commission to conduct such aerial surveillance flights, the members of the Council call upon the Government of Iraq to take all the necessary steps to ensure that the Iraqi military forces will not interfere with or threaten the security of the flights concerned and to comply with its responsibilities to secure the safety of the Special Commission's aircraft and personnel flying over Iraq.'

The President also said:

'that the members of the Council warn the Government of Iraq of the serious consequences which would ensue from any failure to comply with these obligations'.

"15. The Special Commission, on 15 October 1992, informed the Council of actions endangering the safety and security of the Commission's inspection teams in Iraq, including a systematic campaign of harassment, acts of violence, vandalism to property and verbal denunciations and threats at all levels. The President of the Council issued on the same day a statement to the press stressing the Council's particular concern for the safety of the Commission's inspectors.

"16. In a further statement made on 6 July 1992 on behalf of the Council (S/24240) concerning the Government of Iraq's refusal to permit access to certain premises by a team of inspectors, the President said:

'Iraq's present refusal to permit access to the Inspection Team currently in Iraq to the premises designated by the Special Commission constitutes a material and unacceptable breach by Iraq of a provision of resolution 687 (1991) which established the cease-fire and provided the conditions essential to the restoration of peace and security in the region. The members of the Council demand that the Government of Iraq immediately agree to the admission to the premises concerned of the inspectors of the Special Commission as required by the Chairman of the Special Commission, so that the Special Commission may establish whether or not any documents, records, materials, or equipment relevant to the responsibilities of the Commission are located therein.'

"Security Council resolution 707 (1991) demands that Iraq allow the Special Commission, the IAEA and their inspection teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect. Therefore, the Council cannot accept Iraq's insistence that there must be a limit on access by the inspection teams.

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"(c) Repatriation of and access to Kuwaiti and third-country nationals in Iraq

"17. As regards Kuwaiti and third-country nationals in Iraq, Security Council resolutions 664 (1990), 666 (1990), 667 (1990), 674 (1990), 686 (1991) and 687 (1991) impose an obligation on Iraq to release, facilitate repatriation of, and arrange for immediate access to them, as well as the return of the remains of any deceased personnel of the forces of Kuwait and of the member States cooperating with Kuwait pursuant to resolution 678 (1990). Furthermore, paragraph 30 of resolution 687 (1991) requires Iraq to extend all necessary cooperation to the International Committee of the Red Cross (ICRC) in facilitating the search for Kuwaiti and third-country nationals still unaccounted for.

"18. In spite of ICRC's best ongoing efforts, ICRC has not received information as to the whereabouts of the persons reported missing in Iraq. Nor has it received detailed and documented information on the search conducted by the Iraqi authorities. Following the 11-12 March 1992 Council meeting with the Iraqi Deputy Prime Minister, Iraq published in its press lists of those believed missing/detained inside Iraq. ICRC has still not received permission to visit Iraqi prisons and detention centres in accordance with standard ICRC criteria. Very few missing persons/detainees have been released since March 1992, while hundreds are believed still to be inside Iraq.

"(d) Iraq's liability under international law

"19. Another obligation concerns Iraq's liability under international law. In resolution 674 (1990), the Security Council reminds Iraq that under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq'. Its liability under international law is reaffirmed in paragraph 2 (b) of resolution 686 (1991) and paragraph 16 of resolution 687 (1991). Resolution 687 (1991) further specifies that it 'is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait'.

"20. By paragraph 18 of the same resolution, the Security Council created a fund to pay compensation for claims that fall within paragraph 16, to be financed by a percentage of the value of the exports of petroleum and petroleum products from Iraq. In view of the existing economic sanctions against Iraq under resolution 661 (1991), Iraq was permitted by the Security Council under resolutions 706 (1991) and 712 (1991) to sell a limited quantity of oil, as an exception, a portion of the proceeds from which would be used to provide financial resources for the fund. To date, it has not availed itself of this possibility. The Council noted that this authorization lapsed on 18 March 1992 but indicated its

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readiness to authorize the regime for the sale of Iraqi petroleum and petroleum products for a like period of time as that specified in the resolutions and also its readiness to consider possible further extensions (S/23732, 19 March 1992). Since then Iraq has not shown any willingness to resume discussions about implementing these resolutions. The members of the Council are aware of a previous request by Iraq for a five-year moratorium on meeting its financial obligations, including payments into the Compensation Fund.

"21. In view of Iraq's refusal to cooperate in the implementation of resolutions 706 (1991) and 712 (1991) after several rounds of technical discussions with the Secretariat, the Security Council adopted resolution 778 (1992) which mandates that certain frozen Iraqi assets be transferred to a United Nations escrow account. A portion of these funds will be transferred to the Compensation Fund.

"(e) Repayment and servicing of Iraq's foreign debt

"22. With regard to another obligation, the Security Council, in paragraph 17 of resolution 687 (1991), demands that Iraq scrupulously adhere to all of its obligations concerning servicing and repayment of its foreign debt.

"(f) Nonentitlement to claims deriving from the effects of the measures taken by the Security Council in resolution 661 (1990) and related resolutions (para. 29 of resolution 687 (1991)) of the Security Council

"23. According to information received with regard to this item, Iraq has attempted to enforce some claims under which it would have benefitted from a contract frustrated by the coming into effect of the terms of resolution 661 (1990), in particular, through the confiscation of the property of foreign companies and organizations left in Iraq.

"(g) Return of property

"24. I now turn to the question of return of property. The Security Council, in paragraph 2 (d) of resolution 686 (1991), demands that Iraq immediately begin to return all Kuwaiti property seized by it, to be completed in the shortest possible period. The members of the Council have previously noted with satisfaction that Iraqi officials involved with the return of property have extended cooperation to the United Nations to facilitate the return. However, much property, including military equipment and private property, remains to be returned.

"(h) Monthly statements of gold and foreign currency reserves

"25. Another obligation is set out by paragraph 7 of resolution 706 (1991), under which the Government of Iraq is required to provide to the Secretary-General and appropriate international organizations monthly

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statements of its gold and foreign currency reserves. To date, no such statements have been provided to the Secretary-General or to the IMF.

"(i) Undertaking not to commit or support acts of international terrorism

"26. By paragraph 32 of resolution 687 (1991), Iraq is required not to commit or support acts of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism.

"27. The Council notes Iraq's statements contained in letters dated 11 June 1991 (S/22687 and S/22689) and 23 January 1992 (S/23472) that it is a party to international conventions against terrorism and that it has never pursued a policy favourable to international terrorism as defined by international law.

"(j) Security Council action with respect to the Iraqi civilian population

"28. Resolutions 706 (1991) and 712 (1991) provide a means for Iraq to meet its obligations to supply its civilian population with needed humanitarian assistance, particularly food and medicine. Resolution 778 (1992) mandates that certain frozen Iraqi assets be transferred to a United Nations escrow account and urges States to contribute funds from other sources to the escrow account. A portion of these funds will be used for humanitarian assistance.

"III. Security Council resolution 688 (1991)

"29. I should now like to refer to the demands by the Security Council with respect to the Iraqi civilian population. In paragraph 2 of resolution 688 (1991), the Security Council demands that Iraq, as a contribution to removing the threat to international peace and security in the region, end the repression of its civilian population. In paragraphs 3 and 7, the Security Council insists that it allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq, and demands its cooperation with the Secretary-General to these ends.

"30. The Security Council remains deeply concerned at the grave human rights abuses that, despite the provisions of resolution 688 (1991), the Government of Iraq continues to perpetrate against its population, in particular in the northern region of Iraq, in southern Shi'a Centres and in the southern marshes (Commission on Human Rights resolution 1992/71 of 5 March 1992). The Security Council notes that this situation is confirmed by the reports of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/31, also circulated as document S/23685 and

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Add.1, and part I of the interim report circulated as document S/24386). The members of the Council recall their public meeting with Mr. Max van der Stoep on 11 August 1992.

"31. The members of the Security Council take note of the renewal on 22 October 1992 the Memorandum of Understanding providing the framework for urgent humanitarian assistance throughout the country between the United Nations and the Government of Iraq.

"IV. Concluding observation

"32. In view of the observations on the record of Iraq's performance, and without prejudice to further action by the Security Council on the question of the implementation of its relevant resolutions by Iraq, the Security Council has considered itself justified in concluding that Iraq has up to now only selectively and then partially complied with the obligations placed upon it by the Council. It is the Council's hope that this meeting will prove a valuable opportunity to impress once again upon Iraq the imperative need for full compliance and to obtain from Iraq undertakings which would constitute an advance in the consideration of this issue as required in the interest of world peace and security, as well as that of the Iraqi people."
